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July 2, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 12, 2006

Case Number: TSO-0411

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹ For the reasons that follow, I conclude that the individual's security clearance should not be restored at this time.

I. Background

The individual is employed by a Department of Energy (DOE) contractor and was granted a security clearance in connection with that employment. In July 2005, the individual completed a Questionnaire for National Security Positions (QNSP). Subsequently, the DOE obtained information about the individual that is inconsistent with the information that he provided on the QNSP. In December 2005, the individual was summoned for an interview with a personnel security specialist. After this Personnel Security Interview (PSI), the Manager of the local DOE office reviewed the individual's file and determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. The Manager informed the individual of this determination in a letter that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization. The individual requested a hearing on this matter. The Manager forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer.

II. Statement of Derogatory Information

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (f) and (l) of the criteria for eligibility for access to classified matter or

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

special nuclear material set forth at 10 C.F.R. § 710.8. Paragraph (f) defines as derogatory information indicating that the individual “has deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire [or] a Questionnaire for Sensitive (or National Security) Positions” With regard to this paragraph, the Letter states that on the QNSP that the individual completed and signed in July 2005, he indicated that he had not filed for bankruptcy during the preceding seven years. During his December 2005 PSI, the individual stated that he last filed for bankruptcy during “the first part of ‘98.” PSI at 6. After being reminded by the security analyst that he had in fact filed for bankruptcy in August 1999, the individual said that he did not include this filing on his QNSP because he thought that it occurred in early 1998, which would have been more than seven years prior to the date of the QNSP. The Letter further states that when asked why he did not report this bankruptcy to the DOE at the time of filing as he was required to do, he replied that he “was just ashamed.” PSI at 7.

Under paragraph (l), information is derogatory if it indicates that the individual “has engaged in any unusual conduct or is subject to any circumstances which tend to show that [he] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [he] may be subject to pressure, coercion, exploitation or duress which may cause [him] to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to . . . a pattern of financial irresponsibility.” 10 C.F.R. § 710.8(l). As support for this paragraph, the Letter cites the individual’s admissions during the PSI that he filed for bankruptcy in 1992 and again in 1999, that since 1999 he has incurred debts on two credit cards that have been “charged off,” and that he has not handled his finances in a responsible manner.²

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.”

² A debt is “charged off” when the creditor no longer believes that the debt will be repaid, and writes it off as a loss.

10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

After reviewing the entire record in this matter, I find that the DOE has made a proper showing of derogatory information raising legitimate security concerns under paragraphs (f) and (l). The individual has admitted to providing false information on the QNSP and to filing for bankruptcy on two occasions and handling his finances in an irresponsible manner. These circumstances adequately support the DOE’s invocation of paragraphs (f) and (l) respectively.

These allegations raise serious questions about the individual’s eligibility for access authorization. The security clearance process is based on trust and a failure to answer questions on a QNSP honestly is a breach of that trust. This can appropriately cause the DOE to question whether the individual can be trusted to comply with security regulations. In addition, an individual could be subject to coercion as a result of this dishonest act. Financial difficulties stemming from irresponsible behavior can also leave a clearance holder vulnerable to coercion, exploitation or duress.

At the hearing, the individual did not dispute the information set forth in the Notification Letter. Instead, through his own testimony and the submission of exhibits, he attempted to show that he did not knowingly provide false information on his QNSP and that his financial affairs are now in order.

He testified that at the time he filled out the QNSP, he thought that he was telling the truth about the timing of his second bankruptcy filing, that more than seven years had elapsed since that bankruptcy. Hearing Transcript (Tr.) at 8. The individual then admitted, under questioning by DOE counsel, that he also falsely answered “No” to Question 28(a) (“In the last seven years, have you ever been over 180 days delinquent on any debt(s)?”) and Question 28(b) (“Are you currently over 90 days delinquent on any debt(s)?”) (28(b)). Tr. at 8-9. He indicated that he provided false information on the QNSP because he had forgotten the date of his last bankruptcy

filing, and that if he were to fill out another QNSP, he would provide the correct information. Tr. at 12.

He explained that his divorce and the ensuing child custody battle led to his 1992 bankruptcy, and that his participation in a strike contributed to the financial difficulties that culminated in the 1999 filing. Tr. at 8, 10. He stated, however, that his current financial condition is “good,” and that he is up to date on all of his payments. Tr. at 13, 23-39. He now has one credit card, with a credit limit of \$500, on which he recently made a payment of \$450. Tr. at 17-18; Individual’s Exhibit 1 at 11.

This testimony, supported by the individual’s exhibits, demonstrates that he has made significant progress in addressing his financial problems. As an initial matter, although the individual has had to negotiate reductions in the amounts owed to some of his creditors, as of the date of the hearing he was up to date on all of his payments. Tr. at 23-39, Individual’s Exhibit 1. Furthermore, the individual has submitted a budget and has demonstrated adequate knowledge of his current expenses and financial obligations. Individual’s Exhibit 2; Tr. at 19-20, 41-43. Finally, the individual testified that he is now depositing \$75 per week into a savings account. Tr. at 50.

However, for the reasons that follow, I conclude that the individual has not adequately addressed the DOE’s security concerns under either paragraph (f) or (l). With regard to paragraph (f), I am not convinced by the individual’s explanation for falsely indicating on his July 2005 QNSP that he had not filed for bankruptcy within the last seven years. Although his explanation that he thought that his August 1999 filing had in fact occurred during “the first part of 1998,” PSI at 6, is convenient, I find it difficult to believe that less than six years after such a momentous event, he would err not only as to the year, but also as to the time of year that the filing occurred.

Moreover, even if I were to believe the individual’s explanation, it does not explain his false answers to questions 28(a) and 28(b). This is because the record clearly indicates that the individual was well over 180 days delinquent on at least two credit card accounts (Capital One and FCNB Master Card) when he completed the QNSP, debts that he incurred after his 1999 bankruptcy. PSI at 17-19, DOE Exhibit 9. At the hearing, the individual testified that when he filled out the QNSP, he “never really gave [these debts] any thought” because he “had started paying them and had talked to [the creditors] about paying them.” Tr. at 8. However, the fact that he had begun to address these delinquencies does not change the facts that they occurred, and that the individual failed to disclose them on the QNSP. Given the lack of any significant mitigating evidence, the DOE’s security concerns under paragraph (f) remain unresolved.

With regard to paragraph (l), I conclude that the mitigating evidence presented by the individual is insufficient to adequately address the concerns raised by his troubled financial history. That history includes bankruptcy filings in 1992 and 1999 and a recurrence of financial difficulties that led to charge-offs by two credit card companies in 2003, and the referral of the individual's debt by a third creditor (CitiFinance) to a collection agency. I recognize that the individual has asserted, without supporting evidence, that his bankruptcies were due in large part to a divorce and custody battle, and to his participation in a strike. However, even assuming that these assertions are true, it is evident that the individual also made substantial discretionary expenditures for jewelry, dining out and "crazy stuff," PSI at 12-14, purchases that contributed to the bankruptcies. The individual admitted during the PSI that there was no reason that he should not have been able to pay his debts, PSI at 14, and that he had not handled his finances in a responsible manner. PSI at 7-8, 21, 22.

Once such a pattern of financial irresponsibility has been established, the individual must demonstrate a new pattern of financial responsibility that is sufficient to indicate that a return to the irresponsible pattern is unlikely. *See, e.g., Personnel Security Hearing*, Case No. VSO-0108, December 3, 1996. Although, as outlined above, the individual has made significant progress in getting his financial affairs in order, he has not yet established a pattern of financial responsibility of sufficient duration to convince me that a return to his previous pattern is unlikely. The individual did not make substantial progress toward paying off his debts until August 2006, one month prior to the hearing. Individual's Exhibit 1. This limited period is insufficient to allay the legitimate concerns raised by his history of bankruptcies and financial irresponsibility that spans a period of at least 14 years. The individual has not adequately mitigated the DOE's security concerns under paragraph (l).

VI. CONCLUSION

Based on the factors discussed above, I find that the individual has not adequately addressed the security concerns set forth in the Notification Letter. Accordingly, he has not demonstrated that restoring his clearance would not endanger the common defense and would be clearly consistent with the national interest. The individual's security clearance should not be restored at this time.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: July 2, 2007

